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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF APPEALS

Appellant: David R. MacLean

Serial No: 09/550,049

Filed: April 14, 2000

For: SAFETY DEVICE FOR USE  
WITH A VIAL

Appeal No.

REQUEST FOR REINSTATEMENT OF THE APPEAL

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

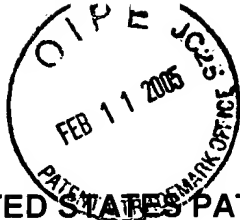
Appellant hereby requests the reinstatement of the appeal for the instant application. This request is accompanied by the attached Supplemental Appeal Brief addressing the new ground of rejection raised in the final rejection Office Action dated December 13, 2004 that reopened the prosecution. As noted in the Supplemental Appeal Brief, the Appeal Brief filed on April 15, 2004 is incorporated by reference to the Supplemental Appeal Brief.

With the filing of the instant Supplemental Appeal Brief, it is respectfully requested that the appeal of this application be reinstated.

Respectfully submitted,

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Date: Feb 11, 2005



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Appellant: David R. MacLean )  
Serial No: 09/550,049 )  
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For: SAFETY DEVICE FOR USE ) Appeal No.  
WITH A VIAL )

**SUPPLEMENTAL APPEAL BRIEF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is a brief for appealing the final rejecting of pending claims 22-27 of the above-identified application.

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## **PREFACE**

This Supplemental Appeal Brief is filed to Request Reinstatement of the Appeal in light of the reopening of the prosecution of the application by the examiner per the final rejection Office Action dated December 13, 2004.

Except as stated in particular hereinbelow, all sections of the Appeal Brief filed on April 15, 2004 (Appeal Brief) are incorporated by reference in herein.

## **REAL PARTY IN INTEREST**

The statement of the Real Party in Interest section of the Appeal Brief is incorporated by reference herein.

## **RELATED APPEALS AND INTERFERENCES**

The statement in the Related Appeals and Interferences Section of the Appeal Brief is incorporated by reference herein.

## **STATUS OF CLAIMS**

The status of claims set forth in the Status of Claims section of the Appeal Brief is incorporated by reference herein. The following is the additional status of the claims in light of the latest Office Action.

The prosecution of the instant case was reopened by the examiner in an Office Action dated December 13, 2004, in response to the filing of the Appeal Brief. However, the December 13, 2004 Office Action places the case under final rejection, even though the examiner has cited a new reference, namely Gyure et al. USP 5,669,889, for further rejecting the claims on appeal.

In a telephone conversation the undersigned had with the examiner on December 21, 2004, the undersigned suggested to the examiner that she could not final reject the claims on appeal since the new ground of rejection was neither (a) necessitated by any amendment nor (2) based on information presented in an IDS. [MPEP §1208.02] The examiner said that if the Appellant desires to have a non-final Office Action, she will send out such. Yet as of the date of the submission of this Supplemental Appeal Brief, no non-final Office Action has been received.

With no amendment to the claims, the claims being on appeal remain claims 22-27 as reproduced in Appendix A of the Appeal Brief.

### **STATUS OF AMENDMENTS**

The statement in the Status of Amendments section of the Appeal Brief is incorporated by reference herein.

### **SUMMARY OF THE INVENTION**

The Summary of the Invention section of the Appeal Brief is incorporated by reference herein.

### **ISSUES**

In addition to the issue presented in the Appeal Brief, which is incorporated by reference herein, in light of the new ground of rejection by the examiner, a second issue being presented on appeal is therefore whether the rejection of claims 22-27 under 35 U.S.C. 102(b) as being anticipated by Gyure et al. USP 5,669,889 (Gyure) is sustainable.

### **GROUPING OF CLAIMS**

The Grouping of Claims section of the Appeal Brief is incorporated by reference herein.

### **ARGUMENT**

The Argument section of the Appeal Brief is incorporated by reference in its entirety herein.

Appellant now addresses the new issue raised by the examiner in the Office Action dated December 13, 2004 whereby claims 22-27 were further rejected under 35 U.S.C. 102(b) in view of Gyure.

In her rejection, the examiner asserts that Gyure teaches "... a latch member 69 extending from [sic] the neck member in a direction towards the center of the collar". [page 2 of the Office Action]

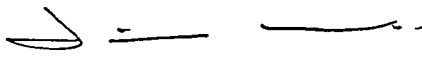
Appellant respectfully submits that the alleged "latch member 69" is not a latch member at all. Rather, component 69 of the Gyure device is a finger pad that is used to

close the needle shield 45 over a needle 21. In particular, with reference to Figs. 6 and 7 and the disclosure in column 6, lines 7-15, it is clear that once the needle shield and collar assembly as shown in Fig. 3 is assembled to the hub of the needle and the syringe 70 (Fig. 2), to move needle shield 45 from its open position as shown in Fig. 6 to the closed position as shown in Fig. 7, a user would press on the back wall 53 of needle shield 45. According to Gyure, finger pad 69 is provided to facilitate the movement of needle shield from the open to the closed position in a single-handed operation. Thus, element 69 of the Gyure device is not a latch member, or in any way used for latching the collar to the hub of a vial.

Indeed, Gyure does not disclose any latch member extending from the neck of a collar in a direction toward the center of the collar.

In view of the foregoing, Appellant respectfully submits that the prior art rejection of the being appealed claims 22-27 under the newly cited Gyure reference is without merit and not sustainable. Accordingly, the examiner's rejection of claims 22-27 under Gyure, as well as that under previously discussed Bachman, are respectfully requests to be reversed.

Respectfully submitted,



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